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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG
FEB 26 2001
Per [Signature] E. D. [Signature] CLERK
[Signature] DEPUTY CLERK

JOHN CHARLES KENNEY,
Plaintiff

No. 1:CV-00-2143

(Judge Rambo)

v.

JAKE MENDEZ, Warden, et al.,
Defendants

DEFENDANTS' MOTION TO STAY THE CASE

Defendants, by their counsel, hereby request this Court to stay this civil action until the completion of Plaintiff John Charles Kenney's criminal trial in United States v. Kenney, No. 4:CR-99-0280 (M.D. Pa.) (McClure, J.), and further, to extend the period within which to answer the complaint or take any other action for sixty days following the disposition of the criminal matter, for the following reasons:

1. This civil case is a Bivens action alleging that on September 29, 1999, Plaintiff, John Charles Kenney, an inmate,

was assaulted by Unit Manager Jesus Gonzalez and Senior Correctional Officer James Scarborough.¹

2. Kenney is being prosecuted for assault on Officer Jesus Gonzalez, resisting Officer James Scarborough and possession of a contraband weapon on September 29, 1999. (See Ex. 1.) Kenney's criminal case, is scheduled for jury selection on April 17, 2001.

3. The assault alleged in Kenney's Bivens action and the assault alleged in the criminal indictment against Kenney both occurred on the same date, in the same location and involve the same event. It would be inappropriate to conduct discovery, i.e. depose Kenney, while his criminal case was proceeding. In addition, some of the issues which Kenney raises in the instant case may be conclusively determined as a result of his criminal trial. Indeed, his ability to pursue his claims against the Defendants may be compromised depending on the outcome of his criminal case.

WHEREFORE, the Defendants requests this Court to stay the civil case and to not require the United States to answer the

¹At the time of the events alleged in his civil complaint, Kenney was housed at the Allenwood United States Penitentiary in White Deer, Pennsylvania ("USP Allenwood"). Kenney is currently being housed at the Medical Center for Federal Prisoners in Springfield, Missouri.

complaint or take any other action in the case until sixty days following the disposition of Kenney's criminal case.

Respectfully submitted,

DAVID M. BARASCH
United States Attorney

A handwritten signature in dark ink, appearing to read "Dulce Donovan", is written over the typed name.

DULCE DONOVAN
Assistant U.S. Attorney
MICHELE E. LINCALIS
Paralegal Specialist
316 Federal Building
240 West Third Street
Williamsport, PA 17703

Dated: February 26, 2001

TAB - 1

DME:FEM:jmm 99R00672

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARY E. DIANDREA, CLERK
Per MSK
Deputy Clerk

UNITED STATES OF AMERICA

:
: CRIM. NO. 4:99 CR - 280

v.

: (VIO: 18 USC §§ 111 & 1791)

JOHN C. KENNEY

:
: McClure

I N D I C T M E N T

THE GRAND JURY CHARGES:

C O U N T O N E

ASSAULT ON A CORRECTIONAL EMPLOYEE

18 U.S.C. § 111(a)(1)

On or about the 29th day of September 1999, at the Allenwood Federal Correctional Complex, United States Penitentiary, Union County, White Deer, Commonwealth of Pennsylvania, a Federal penal and correctional institution, in the Middle District of Pennsylvania, and within the jurisdiction of this Court, the defendant,

JOHN C. KENNEY

willfully and forcibly did assault Unit Manager, Jesus Gonzalez, while the said correctional employee was engaged in the performance of his official duties and thereby inflicted bodily injury, in violation of Title 18, United States Code, Section 111(a) and (b).

THE GRAND JURY FURTHER CHARGES:

C O U N T T W O
RESISTING A CORECTIONAL EMPLOYEE
18 U.S.C. § 111

1. The Grand Jury hereby incorporates by reference, as though set forth fully herein, Count One of the Indictment.

2. On or about the 29th day of September 1999, at the Allenwood Federal Correctional Complex, United States Penitentiary, Union County, White Deer, Commonwealth of Pennsylvania, a Federal penal and correctional institution, in the Middle District of Pennsylvania, and within the jurisdiction of this Court, the defendant,

JOHN C. KENNEY

willfully and forceibly did resist, oppose, and interfere with Senior Correctional Officer James Scarborough, while the said correctional employee was engaged in the performance of his official duties.

In violation of Title 18, United States Code, Section 111(a).

THE GRAND JURY FURTHER CHARGES:

C O U N T T H R E E
POSSESSION OF A CONTRABAND WEAPON
18 U.S.C. § 1791(a)(2)

1. The Grand Jury hereby incorporates by reference, as though set forth fully herein, Counts One and Two of the Indictment.

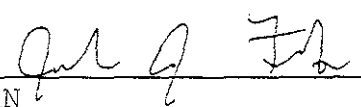
2. On or about the 29th day of September 1999, at the Allenwood Federal Correctional Complex, United States Penitentiary, Union County, White Deer, Commonwealth of Pennsylvania, a Federal penal and correctional institution, in the Middle District of Pennsylvania, and within the jurisdiction of this Court, the defendant,

JOHN C. KENNEY


while an inmate at said federal penal institution did unlawfully and willfully obtain and possess a prohibited object to wit: a homemade weapon which was constructed of a razor blade hidden in a matchbook, which was contrary to the rules and regulations promulgated by said institution, as well as the Bureau of Prisons, to wit: 28 C.F.R. §§ 6.1 and 541.13.

All in violation of Title 18, United States Code, Section 1791(a)(2).

A TRUE BILL


FOREMAN

Date: 11/10/99


DAVID M. BARASCH
United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY, :
 : No. 1:CV-00-2143
Plaintiff :
 : (Judge Rambo)
v. :
 :
JAKE MENDEZ, Warden, et al., :
 :
Defendants :

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.


That this 26th day of February, 2001, she served a copy of the attached

DEFENDANT'S MOTION TO STAY THE CASE

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

ADDRESSEE:

John Charles Kenney
Reg. No. 05238-041
MCFP Springfield
P.O. Box 4000
1900 West Sunshine
Springfield, MO 65801-4000


ANITA L. LIGHTNER
Paralegal Specialist